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Supreme Court, U.S.
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No. 04-902

In The

Supreme Court Of The United States

JERRY MURPHY,
Petitioner

vs.

METROPOLITAN TRANSIT AUTHORITY,
Respondent

On Petition for a Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR REHEARING IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR REHEARING

This case was denied a writ of certiorari on March 7, 2005. The Petitioner, Jerry Murphy, now files this appeal on the grounds of fairness in Equal Employment Opportunity discrimination cases.

The Petitioner assumes the Court has denied this petition for the reason presented by the Respondent, that the issues of this case 'do not satisfy the Court's Requirements for Granting Certiorari'. To this point the Petitioner offers the following to the Court.

According to Rule 10, the Court has judicial discretion over matters that 'so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers'.

The complaint of this case was for employment discrimination on the basis of age and race that ended in the Petitioner being terminated. At the outset the Petitioner indicated that the stated reasons for the termination were not true, correct, or factual; and in fact the stated reasons were pretextual for age and race discrimination. The Petitioner was asked to provide proof of age and race discrimination. To this request the Petitioner has responded that the examples of age and race discrimination are provided in the circumstantial evidence of how Mr. Murphy was treated differently from the other employees. Mr. Murphy was assigned the least favorable areas (low subsidy areas) and then measured against his co-workers who were given favorable assignments. Mr. Murphy's performance <u>was not</u> less than adequate; only that it was reported as such and believed by others. This inaccurate reporting is part of the circumstantial evidence of age and race bias. Next,

the placement on a performance improvement plan because of an overall performance evaluation of 'Does Not Meet' was not correct. The total overall performance did not correctly calculate to 'Does Not Meet' but instead calculated to 'Satisfies Most', which is above the level to be placed under a performance improvement plan. Finally, Mr. Murphy experienced age and race bias when he was terminated for allegedly not informing management, in a timely fashion, of a problem with a developing vanpool group. This assertion is not a factual accounting or supported by documentation.

The Petitioner asks the Court to look at this case because it has elements of injustice in an environment of frivolous lawsuits.

The District Court moved hastily to a decision without sufficient understanding of the Metro's vanpool procedures. The District Judge said: "...he lied about the existence of a vanpool. Metro fired him for this." "Murphy wishes away the paper record that he produced." (*pg. 3*) The District Judge is incorrect on both of these assertions. Mr. Murphy did not lie about the existence of a vanpool, and Mr. Murphy does not wish away his paper work submission because it was a correct submission. Mr. Murphy followed Metro's standard procedure, which he had followed on each of his van group paper work submissions over his two years of employment. The Metro supervisor, who was relatively new to his position, was mistaken about van paperwork procedures. The District Court Judge accepted the assertion of the Metro supervisor without verifying if he was correct by indicating: "It is irrelevant whether Metro's grounds for firing Murphy were erroneous as long as they were not transparent or false." (*pg. 3*) The Petitioner contends the grounds for termination were transparent and false. The Petitioner presented

document evidence that the grounds for termination were false, and circumstantial evidence that the reason for termination was transparent.
The main reason that the Metro upper management supported the supervisor's recommendation for termination was because they thought Mr. Murphy had not informed his supervisor about developmental problems with the vanpool group. When the Petitioner supported his claim of proper communication with physical evidence of e-mail proof, the Defendant responded that the supervisor 'had forgotten about the e-mail messages'. (*Pg.2, docket item #31*) The District Court Judge has allowed this type of assertion to continue without recognizing Metro's unfairness in this case.

The Court of Appeals considered with arguendo 'that Murphy did present a *prima facie* case', (*pg. 4*) however, they accepted the Defendant's reason for termination as valid, indicating Mr. Murphy's job performance as the back ground that lead to the termination. The Court of Appeals cited, incorrectly, that Mr. Murphy had 'problems with *his* job performance over the course of his two-year employment.' "Every performance evaluation and nearly every correspondence in the record indicated Murphy's deficiency." (*pg. 4*) The Court of Appeals has errored in this assertion because Mr. Murphy provided the document proof that he had four performance evaluations and all except the last one were 'Completely Satisfied' standards. The Appeals Court went on to say: "Murphy produced no corroborating evidence to support these allegations regarding the dissolution of the vanpool." (*pg. 6*) This statement is not correct because Mr. Murphy provided e-mail evidence that the vanpool group was still interested in forming as late as October 13, 2002, three day after the termination. The vanpool group

had not dissolved and it had been given permission to consider forming until Oct. 16th.

It is clear to the Petitioner that according to Rule 10: "A petition for writ of certiorari is rarely granted when the asserted error consist of erroneous factual findings or the misapplication of properly stated rule of law."

Even though both situations have occurred in this case, the basis of this appeal permeates to a larger issue. There is an issue of fairness in employment cases, in an environment of frivolous lawsuits, when the pendulum has swung too for outside the boundaries of reasonableness; and this case is an example of that. There was no investigation into the issues of this case at the EEOC level. The Petitioner believes the case was deprioritized when the EEOC's intake questionnaire asked if the applicant had previously filed an EEOC complaint. The Petitioner had gone through EEOC in 1986 against the Metropolitan Life Insurance Company. That case concluded with a Right To Sue Letter, which was continued to Federal Court with Judge Lynn Hughes rendering a decision against the Plaintiff. His decision was reversed upon appeal and returned to his Court where it settled out of court in 1989. In the current case, it was again before Judge Lynn Hughes and again Judge Hughes denied the complaint; and he was sustained upon appeal.

The Petitioner, Mr. Murphy, has not been able to secure employment in his field of expertise as an employment benefits manager since his lawsuit against the Metropolitan Life Insurance Company. Mr. Murphy feels that lawsuit was discovered by his Metro department managers and that information was used to dissuade other department managers as he sought a position in Metro's employee benefit department.

Since this current case was not investigated by EEOC for the issues of the complaint under which it was filed, a pattern of unfairness was established. If the stated reasons for termination are not true, and circumstantial evidence of age and race are asserted, then how does it follow that an EEOC case can sustain the position of the Defendant? What is the intransigent meaning of Equal Employment Opportunity if the level of proof of age and race issues is so high that no case can satisfy that level of proof?

When Mr. Murphy filed his current lawsuit he went to every attorney in the Houston area who was certified in employment law to request they take the case. All that responded indicated they would not take a discrimination case on retainer by contingency that was in Judge Lynn Hughes' court, no matter what the merits were.

Mr. Murphy has suffered the humiliation of termination for an issue he did not commit, under an implied accusation of ethical impropriety. Mr. Murphy has sought an investigation into this matter first internally within the company, then through the legal system. The legal system is broken when a case has as many errors as this case does and the level of proof necessary to sustain the complaint will not consider circumstantial evidence. Since this Court has already resolved that circumstantial evidence is appropriate in discrimination cases, the Petitioner asks the Supreme Court to reconsider this case for its Petition For Writ Of Certiorari to bring fairness back to Equal Employment Opportunity cases in the Fifth Circuit.

Respectfully submitted,

Jerry Murphy

Jerry Murphy, *Pro Se* Petitioner

May 16, 2005

Certification Pursuant to Rule 44.2

The Petitioner, Jerry Murphy, certifies that this petition for rehearing is presented in good faith and is not for the purpose of any delay. The contents of the petition for rehearing are limited to matters cognizable under Rule 44.2 of the Rules of the Court.

Jerry Murphy

Jerry Murphy, Petitioner, *Pro Se*